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EXAMINER

MEREK, JOSEPH C

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**GROUP 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 21

Application Number: 09/525,526  
Filing Date: March 15, 2000  
Appellant(s): PRZYTULLA ET AL.

\_\_\_\_\_  
Nanda K. Alapati  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1/30/03.

A statement identifying the real party in interest is contained in the brief.

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The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

A statement identifying the related appeals and interferences that will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(1) *Real Party in Interest***

The real party in interest is noted as the specified assignee. The application does not have an assignment noting the assignee.

**(2) *Related Appeals and Interferences***

The statement of related appeals and interferences is correct.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(5) *Summary of Invention***

The summary of the invention is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

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**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The grouping of the claims is correct as all the claims stand or fall together.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

95/30585	Wheaton	11-1995
9408722.9	Mauseer-Werke GmbH	11/1994
3985257	Shaffer et al	10/1976
3780899	Roper	12/1973

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 27-29, 34, 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wheaton (WO95/30585). Regarding claim 27, the limitation of blow-molded does not add any structure that is not found in the reference. Once the welding is accomplished the construction is unitary. The unitary construction and blow molding do not preclude the weld lines. The container of the instant invention is placed in a separable mold that will impart molding lines in the final product where the mold halves meet. See Fig. 4, where it is shown that the corners are rounded and the cross-section is square shaped. The sidewalls are concave on the outside as seen from the top of the container to the bottom of the container. Therefore, the inside surface of the sidewalls are convex. See Fig. 3, which shows the stiffening element, which is the

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groove 20 and is "U" shaped. Regarding claim 34, the lid is removable at the weld line 19 by cutting. Regarding claim 36, item 16 on either end of the container is the foot hoop.

Claims 27-29, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper '899 in view of Shaffer et al. Regarding claim 27, Roper does not teach that the container is made of plastic or blow molded. Shaffer et al teaches a drum that is made of plastic and blow-molded. It would have been obvious to employ the plastic and blow molding of Shaffer et al in the container of Roper to provide a container that will not corrode and to provide a method of producing the container rapidly. The exterior of the drum is convex and the sides are substantially identically shaped. See Fig. 1 of Roper '899 where 29 is the stiffening element. The construction of the container is unitary since it is blow molded. Regarding claims 35, the modified container of Roper does not teach the two side bungs. Shaffer et al teaches a drum with two bungs on the top wall that are opposite each other and adjacent the side wall. It would have been obvious to employ the bungs of Shaffer et al in the container Roper so that the container can be filled and emptied standing upright. Regarding claims 14, 21, and 25, the hoops are at approximately 43% of the height of the body. Regarding claim 34, the top surface is removable since it can be cut-off and removed from the container. Regarding claim 35, see Fig. 1 of Roper '899 where the bungs are shown which are adjacent to oppositely facing first and second sides. Regarding claim 36, see Fig. 3 of Roper '899, where 79 is the foot hoop.

Claims 27-29, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 940872 in view of Roper '899. Regarding claim 27, DE '722.9 teaches a round or rectangular shaped container but does not teach the substantially

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identically shaped four sides giving an approximately square shape. Roper '899 teaches a drum with four sides with substantially the same shape giving approximately square shape. It would have been obvious to employ the shape of Roper '899 in the container of DE '872 to provide an alternative shape for the container. DE '899 does not teach the horizontal indentation-stiffening element. Roper '899 as seen in Fig. 1, teaches an indentation. It would have been obvious to employ the indentation of Roper '899 in the container of DE '872 to stiffen the sidewall. See Fig. 60 is the stiffening element. Regarding claim 28, the container is unitary construction since it is blow molded as taught by DE '877. Regarding claim 34, the top surface is removable since it can be cut-off and removed from the container. Regarding claim 35, see Fig. 1c where the claimed bungs are shown. Regarding claim 36, the hoop is seen in DE '872 as item 42.

**(11) Response to Argument**

Applicant argues that the structure of Wheaton is not blow molded, is not unitary and does not have a convex sidewall. Applicant argues that the term unitary must be equated with one-piece construction. This assertion is incorrect. Applicant has failed to include a definition of "unitary" in the specification. Claim terms are given there ordinary and accustomed meaning unless it is appears that the inventor used them differently. See *Lantech Inc. v. Keip Machine Co.* 31 USPQ2d 1666. The definition as listed in the provided in appendix F does not lead one to the conclusion that the structure has to be

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one-piece to satisfy the term unitary. The definition states unitary as being one of a unit or a whole. Clearly the reference to Wheaton after welding is a whole. Moreover, even if the term relates to one-piece construction, as seen in Fig. 2 of Wheaton, the lower part of the walls are one-piece with the bottom. This satisfies the claim language as interpreted as requiring one-piece construction. Applicant asserts that the cited patents equate that unitary construction with one-piece. The examiner has found patents that equate a structure of multiple separate parts welded together as being unitary. US 6,179,180 states that the article can consist of a number of welded parts to form a unitary construction. Applicant argues that the reference to Wheaton does not disclose a plastic blow molded container and that the blow-molded container is different from an injection molded container. However, aside from citing references disclosing blow molded containers, applicant has not set forth the structural difference or differences that are imparted to the container via the blow molding process that is not in the reference. As set forth in MPEP 2113 when the examiner takes the position that there is no structural difference between the reference and the claimed invention, then the burden falls upon applicant to set forth the structural difference or differences that are in the claimed invention due to the specific process limitation. Applicant only argues that the reference to Wheaton is not in the class of blow-molded containers. Moreover, when containers are blow molded a parison is placed in between mold halves and then expanded by air to form the container. The container has lines along the exterior surface from where the mold halves meet. Wheaton, on page 5, lines 17 and 18 states that the body may or may not be formed in at least two separate parts and may or may

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not be formed by injection molding. Applicant argues that the convex has to be on the exterior of the container. This limitation cannot be found in the claims. Though the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Yamamoto et al* 222 USPQ 934.

Applicant argues that motivation to combine Roper and Shafer et al is not in the references. This is incorrect. Roper is essentially a steel drum type container. Schaffer et al notes in Col. 1, lines 6-11, the prior art steel drums have to be provided with non-corrosive linings, have limited impact resistance and are relatively heavy even when empty. The motivation is to eliminate the drawbacks of the prior art steel drums.

Applicant argues that motivation to combine DE '722.9 in view of Roper is not in the references. The containers of DE '722.9 and Roper are both for the same purpose of holding and transporting materials. The DE '722.9 container has a shape that is rectangular but is not square. To modify the container of De '722.9 with the uniform sides would have been obvious since they are both employed for space considerations as taught by Roper in Col. 7, lines 64-68 and Col. 8, lines 1-47. The concave belt of Roper is for strengthening the sidewall of the container. It would have been obvious to employ this structure in the De '722.9 to strengthen the sidewall.

For the above reasons, it is believed that the rejections should be sustained.





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Respectfully submitted,



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April 21, 2003

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